UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/1998/239
16 March 1998

ORIGINAL: ENGLISH

LETTER DATED 16 MARCH 1998 FROM THE PERMANENT REPRESENTATIVE OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE ACTING PERMANENT REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

1. We refer to the letters of 2 and 4 March 1998 addressed to you by the Permanent Representative of the Libyan Arab Jamahiriya to the United Nations (S/1998/179 and S/1998/192) in advance of the sanctions review held on 6 March, seeking the lifting of the sanctions imposed on Libya by the Security Council or their suspension. The outcome of that sanctions review was that the Council made no change to the sanctions regime. Nevertheless those letters, which seriously misrepresent the effect of the recent judgments of the International Court of Justice (S/1998/191), require correction.

2. The cases filed by Libya on 3 March 1992 against our two Governments before the International Court of Justice claim that our Governments' demand for the surrender for trial of the two Libyan citizens accused of perpetrating the Lockerbie outrage are in breach of Libya's rights under the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. Before those applications had been brought to the Court, the Security Council had already called upon Libya to provide an effective response to the demands for surrender (resolution 731 (1992) of 21 January 1992). In default of an effective response, the Council then imposed sanctions on Libya by resolution 748 (1992) of 31 March 1992, which it subsequently strengthened - still in default of an effective Libyan response - by resolution 883 (1993) of 11 November 1993. In Orders dated 14 April 1992, the International Court of Justice ruled, inter alia, that resolution 748 (1992) prima facie imposed binding obligations on all three parties. Under the Charter of the United Nations, these prevail over their obligations under any other international agreement, including the Montreal Convention.

3. In its Memorial, Libya subsequently asked the International Court to rule that the resolutions of the Security Council were invalid and unlawful, or that they were "inopposable to Libya". Our two Governments then filed formal Preliminary Objections asking the Court to dismiss the case at the preliminary stage. The International Court gave its decision on these Preliminary Objections on 27 February 1998. These Preliminary Objections asked the Court to

dismiss the Libyan claims at the preliminary stage, and without full argument, on three grounds:

jurisdiction: (a) that the Libyan claims were not within the Court's jurisdiction in that they disclosed no real dispute between Libya and our two Governments under the Montreal Convention;

admissibility: (b) that the Libyan claims were inadmissible in the light of the Security Council resolutions; or, alternatively

(c) the Court should in any event dismiss the Libyan claims as being without object, given the overriding legal effect of the Security Council resolutions.

4. In its judgments the Court dismissed the first two of these three Objections. It held that there was a dispute relating to the Montreal Convention which could be decided by the Court. The Court said that both the jurisdiction of the Court and the admissibility of any claim had to be determined at the moment Libya's claims were first filed. Because resolutions 748 (1992) and 883 (1993) were adopted after the filing of the Libyan applications, they were disregarded for the purpose of the first two Objections, and for these purposes alone.

5. The third of the Objections was, however, held by the Court not to have an "exclusively preliminary character" and it could therefore not be decided at the preliminary stage. As a result, its substance must now be further argued by the parties and decided in due course by the Court at the end of the proceedings. As is normal for such a finding, the Court has not pronounced in any way on the substance of the third Objection; rather, it explicitly stated that it will be able to consider this Objection when it reaches the merits of the case, that is to say, the hearing of the full argument (paragraphs 50 and 51 of the judgments on the applications filed against the United Kingdom and the United States respectively). The Court has in no way suggested that the Security Council was under any obligation to suspend or modify its decisions; indeed, the Court had already in 1992 rejected Libya's request for an injunction to prevent further actions by the Council.

6. It follows that the Libyan letter is highly misleading when it suggests that anything in the judgments affects the resolutions of the Security Council. The resolutions remain in full force and effect. Libya must comply with them as required by the Charter. The Libyan letter confuses the judgments of the International Court which, as explained above, were on preliminary jurisdictional issues, with the substance of Libya's own claims, in which it asks the Court to invalidate the Council's decisions. The Court has not pronounced on the merits of Libya's claims in any way. They will be vigorously resisted by our two Governments in the further argument before the Court.

7. A decision by the International Court of Justice on Preliminary Objections lodged with it has a purely procedural character affecting future proceedings in the case. It does not, and cannot, constitute a final "judgment" of the kind referred to in Article 94, paragraph 2, of the Charter of the United Nations. The Court's decisions in the present matter require, in any case, no

enforcement. Our two Governments, out of the high respect they have for the International Court of Justice, will proceed in the light of its findings that it has jurisdiction and will avail themselves of their full rights to deploy further legal argument rebutting Libya's claims at the merits stage.

8. It is important to be clear what the cases before the International Court of Justice are not about. They are not a determination of the criminal case against the accused. The Court has no jurisdiction to try criminal cases and has not asserted such jurisdiction. The case against the two accused can only be determined once they are brought for trial in a criminal court. And the cases are not about the International Court of Justice deciding where the criminal trial should be held. The Court does not have jurisdiction to decide on the appropriate manner for the accused to be tried. Instead, the Court has held that it has jurisdiction to determine, under the Montreal Convention, whether our two Governments' demand for surrender of the accused (endorsed by the Security Council) are or are not in breach of Libya's rights under that Convention.

We would be grateful if you would have the text of the present letter circulated as a document of the Security Council.

(Signed) Sir John WESTON
Ambassador Extraordinary
and Plenipotentiary
United Kingdom Permanent
Representative

(Signed) A. Peter BURLEIGH
Ambassador Extraordinary
and Plenipotentiary
United States Acting
Permanent Representative